

T.E.T. PARTNERSHIP ET AL.
(ON RECONSIDERATION)

IBLA 84-228 through
84-238, 84-609
84 IBLA 10 (1984)

Decided July 1, 1985

Petition for reconsideration of decision affirming as modified rejections of automated simultaneous oil and gas lease applications.
W 86582 et al.

Petition granted; prior Board decision vacated; decisions of Wyoming and Montana State Office reversed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Under 43 CFR 3112.2-1(b) and 43 CFR 3102.4 (1982), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, where the signatory is an agent or attorney-in-fact for the applicant. Where an individual signs the application as an attorney-in-fact it will be presumed, in the absence of evidence to the contrary, that the individual is the attorney-in-fact for the applicant.

APPEARANCES: John F. Shepherd, Esq., Washington, D.C., and Edward B. Poitevent II, New Orleans, Louisiana, for petitioners; Stephen M. Brown, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On varying dates in November 1983, the Wyoming State Office, Bureau of Land Management (BLM), rejected a total of twenty automated simultaneous oil and gas lease applications filed on behalf of certain of the petitioners

and which had been accorded priority in the July 1983 drawing. 1/ Part B of each of the applications involved indicated that the individual applicants had utilized the services of Bell Filing Service, Inc., in making the filings. Each application form was signed "By: John C. Saunders, Attorney-in-Fact." The Wyoming State Office concluded that this signature created an ambiguity because it was unclear whether John C. Saunders was acting as attorney-in-fact on behalf of the filing service or as an attorney-in-fact for the applicant. In addition, the Wyoming State Office noted that the application did not contain the name of the applicant in the signature box. For these reasons, the Wyoming State Office rejected the applications. Timely appeals were filed.

On April 26, 1984, the Montana State Office, BLM, issued similar decisions rejecting nine additional applications on the ground that the failure to indicate whether John C. Saunders was acting as an attorney-in-fact for the applicant or the filing service gave rise to a fatal ambiguity. 2/ Appeals were timely taken from this decision as well. Inasmuch as both sets of decisions involved identical questions of fact and law, the Board, sua sponte, consolidated the various cases for the purpose of decision.

In its decision styled T.E.T. Partnership, 84 IBLA 10 (1984), a panel of this Board first held that the Wyoming State Office erred in rejecting the application because of the failure of the application to contain the name of

1/ The following individuals or partnerships have appealed from rejection of their applications by the Wyoming State Office:

<u>IBLA NO.</u>	<u>APPELLANT</u>	<u>BLM SERIAL NO.</u>
84-228	T.E.T. Partnership	W 86582, 86636
84-229	The Camp Partners	W 86670
84-230	Chaucer Partnership	W 86674, 87040
84-231	Russell A. Nelson	W 86681
84-232	Sherbourne Partnership	W 86685, 86724
84-233	Yarmouth Partnership	W 86762, 87101
84-234	Rutland Partnership	W 86790, 87083
84-235	Devonshire Partnership	W 86820, 86998
84-236	Aston J. Fischer	W 86958
84-237	Diane Temple	W 86964, 86995
84-238	Two Rich Partnership	W 86594, 86656, 86676

2/ The following individuals or partnerships have appealed from rejection of their applications by the Montana State Office:

<u>IBLA NO.</u>	<u>APPELLANT</u>	<u>BLM SERIAL NO.</u>
84-609	G.F.T. Partnership	M 59241
	Two Rich Partnership	M 59242, 59263
	Sherbourne Partnership	M 59247
	Rutland Partnership	M 59261
	Diane Temple	M 59275
	Maple Partnership	M 59337
	T.E.T. Partnership	M 59430
	Yarmouth Partnership	M 59523

the applicant in the signature box. As the decision noted "there is no requirement that both the applicant's name and signature be shown in the signature box. Subpart 3112.2-1(b) (1982) only requires an application to be holographically (manually) signed by the applicant or by anyone authorized to sign on the applicant's behalf." Id. at 12.

Turning to the question of whether the applications were fatally defective because of the failure of Saunders' signature to indicate whether he was attorney-in-fact for the applicant or for the filing service, the decision reiterated the regulatory requirement, found at 43 CFR 3112.2-1(b) (1982), that "[a]pplications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship." The decision also recited the applicable language of 43 CFR 3102.4 (1982), to similar effect. Noting that it was impossible to discern from the application whether Saunders was the attorney-in-fact for the applicant or the filing service, the decision held that an ambiguity was, in fact, created by this omission, resulting in the mandatory rejection of the applications.

The Board recognized that in a recent decision entitled ANR Production Co. v. Watt, Civ. No. C83-375-K (D. Wyo. Jan. 11, 1984), reversing a decision of this Board in Liberty Petroleum Corp., 73 IBLA 368 (1983), the Court had held that the prescriptions of 43 CFR 3102.4 should not be mechanically applied to require rejection of an application for failure to identify the relationship between a corporation and the signatory of the application where BLM knew that, in fact, the signatory was an officer of the corporation.

In distinguishing this ruling from the fact situation disclosed in the present case, the Board placed great reliance on a memorandum issued by the Under Secretary of the Department of the Interior, dated October 18, 1984, and entitled "The Matter of Corinth Partnership." While this memorandum directed that all pending adjudications be examined to insure consistency with the ruling in ANR Production, it carefully differentiated between corporate and partnership filings and those made merely by agents. Thus, the memorandum noted that "The regulations involved in the ANR case and the Corinth appeal were intended only to require disclosure of the relationship between principals and agents, not relationships of officers to corporations and partners to partnerships * * *." (Emphasis added.)

A BLM Instruction Memorandum attached to the memorandum of the Under Secretary expanded upon this statement. See IM No. 84-658, "Acceptability of Simultaneous Oil and Gas Applications That are Undated or Fail to Designate Relationship of Signatory to Corporate Applicant." Thus, this Instruction Memorandum expressly noted that "any third party that is not a member of the corporation, association, or partnership that is a SOG applicant, is not relieved from the regulatory requirements to disclose agency relationships." (Emphasis in original.) Inasmuch as it was admitted that John C. Saunders was not a member of any of the partnerships which had filed applications, the Board held that the disclosure requirements of the regulation were clearly applicable.

It was also argued in the original appeal that there was no ambiguity as to the relationship between the applicant and the signatory when the applications were viewed in their entirety. The panel rejected this factual contention, noting that there was no reference on the application form to any qualifications file and emphasizing that "these applications provided no means by which that relationship could be revealed by the records in the possession of BLM." 84 IBLA at 14. While the Board recognized that appellants had provided information on appeal showing that the various applicants had granted powers of attorney to Saunders, the Board held that such clarification came too late, as the relationship was required to be disclosed at the time of the filing of the application. Having thus determined that the applications had failed to adequately disclose the relationship between the applicants and the signatory, the decision affirmed the rejection of the applications on this ground.

The Board decision in T.E.T. Partnership issued on November 26, 1984. Over two months later, on February 7, 1985, the Board received a petition for reconsideration and a request for issuance of an order to stay the running of the 90-day period for the initiation of a suit for judicial review provided by 30 U.S.C. § 226-2 (1982). In support of its reconsideration request, petitioners noted that "we understand through discussions with the Office of the Solicitor that the BLM agrees that the relationship between Mr. Saunders and the applicants was adequately disclosed by the signature 'John C. Saunders, attorney-in-fact.' We further understand that BLM will be filing a pleading with the Board supporting appellants' petition for reconsideration."

The Board took no action on this petition, nor was any filing received from the Office of the Solicitor prior to February 25, 1985, on which date appellants sought judicial review in the United States District Court for the District of Wyoming. On March 12, 1985, subsequent to the initiation of Federal court review, counsel for BLM, which had submitted no filings while the matter was originally pending, made an initial appearance and submitted a brief in support of appellants' petition for reconsideration. In light of the pending court complaint, the Interior Board of Land Appeals took no further action on these requests that the Board reconsider its original decision. 3/

At a pretrial conference before the District Court on June 4, 1985, counsel for the Secretary of the Interior requested a stay of proceedings before the Court in order to afford this Board an opportunity to reconsider en banc its original decision. By order of that same date, the Court, inter alia, stayed proceedings before it, pending reconsideration en banc by this

3/ Although the Board recognizes that, absent an express order of the Court staying further action, the mere filing of an appeal does not divest the Board of jurisdiction to consider a pending petition for reconsideration, the Board will normally not adjudicate such a petition, in deference to the Federal judiciary, while a suit is pending unless the Court requests such further adjudication.

Board. Pursuant to this order, the Board hereby grants reconsideration of our original decision in this matter.

Petitioners suggest that the original Board decision was in error because it was clear from both the regulation and the application form that Saunders was signing on behalf of the applicant and not the filing service. Thus, petitioners point out that both 43 CFR 3112.2-1(b) (1982) and the instructions on the back of part B of the application form require that the application be signed either by the applicant "or anyone authorized to sign on behalf of the applicant." Thus, petitioners argue that it should be assumed that anyone who signs as an attorney-in-fact is necessarily asserting that he is an attorney-in-fact for the applicant since, unless this is the case, the application has not been completed in accordance with the regulatory mandate and would be subject to rejection for this reason alone. Upon further reflection, we are now convinced that petitioners are correct.

In retrospect, it seems clear that both the Bureau and this Board were overly attentive to the fact that petitioners had used a filing service in making their applications. Thus, it is very unlikely that this Board would have held that a fatal ambiguity existed where an application was signed by an attorney-in-fact of an individual who did not use a filing service, even though the attorney-in-fact, while indicating his status on the application, did not expressly state that he was the attorney-in-fact for the applicant. Rather, the obvious inference would be that the signatory was the attorney-in-fact for the applicant since it is difficult to conceive for whom else he could be acting as an attorney-in-fact. There is no logical reason why the mere presence of a filing service which has rendered assistance should change this equation.

Moreover, had Saunders been the attorney-in-fact for the filing service, the application would have been improperly completed as the regulations clearly require that the signatory show his relationship to the applicant. Thus, where an individual signs an application for the offeror and designates the relationship as that of an attorney-in-fact, it must be assumed, unless other evidence indicates otherwise, that the signatory was the attorney-in-fact of the applicant.

It goes without saying, however, that BLM is not foreclosed from inquiring further should it have reason to believe that the signatory was not, in truth, the attorney-in-fact for the applicant. In the instant case, however, petitioners had established that Saunders was, indeed, the attorney-in-fact of the applicants and not of the filing service. Thus, there was no basis for the decisions to reject the instant applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the Board's prior decision in the matter, reported at

84 IBLA 10 (1984), is hereby vacated, and the various decisions of the Wyoming and Montana State Offices are reversed. The case files are remanded for further action not inconsistent with the views expressed herein.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

